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Planning Commission
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

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Re: Appeal of Stringline Determination for 312 Hazel Drive, Corona del Mar (Knight Appeal)

Dear Planning Commissioners:

On behalf of Diane Knight, this letter appeals the Stringline Determination for 312 Hazel Drive issued by the Planning Director on February 15, 2013. The lot under appeal (the "Lot") is located on lower Buck Gully south of Pacific Coast Highway in Corona del Mar. Knight0001 Under General Plan Policy NR 23.6 and Coastal Land Use Plan Policy 4.4.3-18, the City is required to establish a "predominant line of existing development" for new structures on Buck Gully. The Planning Director previously established primary and accessory "lines of development" for this Lot on January 10, 2008; this appeal requests reinstatement of those lines in accordance with approved building plans.

Background

The property was purchased by the Knight-Sobelewski family ("Knight") in 2003. In June 2007, the Planning Department imposed a diagonal Stringline at or about the rear setback of the existing house, based on the corners of the immediately adjacent structures. The family appealed this decision to the Planning Commission ("2007 Appeal"). A copy of the 2007 Appeal is attached as Knight0002-34. Before the hearing, the Planning Director identified a primary "line of development" at the same rear setback as the adjacent house to the south, and an accessory "line of development" on a diagonal along the 54' contour. A copy of the Planning Director's 2008 Determination is attached as Knight0049-59.

The Knights accepted the Planning Director Determination, withdrew the 2007 Appeal and completed building plans. A building permit was issued for a new, larger home (the "Project") in 2009, but expired in 2011 after Mr. Sobelewski became terminally ill. He died in July 2012 and Ms. Knight has listed the home for sale. Plans for the home are attached as Knight0010-15 (Exhibit 1 to the 2007 Appeal). Potential buyers have requested reinstatement of the building permit as a condition of purchase.

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In the original 2007 Appeal, the Knights requested establishment of a "predominant line of existing development" for Buck Gully in accordance with the General Plan and CLUP. They identified two possible predominant lines, based on the rear setbacks of a representative block of surrounding structures. The first "predominant line" was a primary setback based on the rear line of the 10 adjacent homes on lots with similar developable acreage, excluding lots with severe topography not present on the Lot. The alternate predominant line was a single line based on the rear line of all statutorily-defined development, including accessory structures, of the 15 adjacent homes. Both of the proposed lines attempted to avoid creating non-conforming structures. Using a structure-by-structure stringline, for instance, makes more than half of the existing homes non-conforming. A graphic study showing the effect of a stringline is attached as Knight0048.

At the same time, the City's General Plan/LCP Implementation Committee considered establishment of a predominant line of development along Buck Gully south of PCH. A map showing proposed 100' Development Areas along Buck Gully from the April 15, 2009 Committee Meeting is attached as Knight0042-43. The draft Committee Development Areas were similar, but somewhat larger than the Knight proposals for a predominant line. The Committee did not finalize a predominant line of development in 2009, but decided to defer adoption until preparation of the Implementation Plan.

In the absence of an adopted predominant line in 2007, the Planning Director determined primary and accessory development lines for the Lot that complied with all potential development setbacks. In making this Determination, the Planning Director also recognized site-specific factors affecting the Lot, including topography and a 32' or 120% variance in setbacks between the nearest points on adjacent structures. After consulting with the General Plan/LCP Implementation Committee, the Planning Director found the Project consistent with the site planning principles of Criterion No. 7 of Ordinance No. 2007-3 and the setback direction of the Committee. Knight0051-52.

Unfortunately, Mr. Sobelewski died before the home could be built. In response to an inquiry about reinstating the expired building permit in February 2013, the Planning Director applied the same diagonal Stringline challenged in the 2007 Appeal. The Stringline does not allow construction of the home approved in 2008 in reliance on the previous Planning Director Determination. This second appeal followed ("2013 Appeal"). Knight0035-37.

There have been no changes in the relevant sections of the General Plan, CLUP or Zoning Code since 2008 when the building permit was issued for 312 Hazel Drive. The "predominant line of existing development" policy was adopted by the City in 2005 and has not been modified since that time. The City and the Coastal Commission have both acknowledged on numerous occasions that the policy is intended to be applied in a flexible manner, with due regard for site-specific factors and development rights.

Ms. Knight cannot proceed with sale of her property unless the Planning Commission establishes a predominant line of development for the Lot. The line of development applied by the Planning Director in resolving the 2007 Appeal is consistent with existing policy and

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procedures, and will allow the sale to go forward. This 2013 Appeal should be granted and the previously-approved development lines shown at Knight0037 reinstated.

City Policies Require Application Of A Predominant Line of Development, Not A Stringline

General Plan Policy NR 23.6 (Canyon Development Standards) and CLUP Policy 4.4.3-18 (Natural Landform Protection) state:

Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements. (Emphasis added.)

Under the express language of the Canyon Development Policies, therefore, the City is required to establish and apply canyon setbacks based on the predominant line of development. A stringline is not a substitute for establishment of a predominant line, but a method of preventing construction beyond the predominant line.

The required setback is based on the predominant line of development for a representative group of homes along lower Hazel Drive. The Glossary defines "predominant line of development" as:

The most common or representative distance from a specified group of structures to a specified point or line (e.g. topographic line or geographic feature). For example, the predominant line of development for a block of homes on a coastal bluff (a specified group of structures) could be determined by calculating the median distance (a representative distance) these structures are from the bluff edge (a specified line).

The Glossary defines "development" as "the placement or erection of any solid material or structure; ... construction, reconstruction, demolition, or alteration of the size of any structure ...". The City typically considers development to include any structure requiring a building permit in the Coastal Zone, including decks, pools and retaining walls.

At the time of adoption, Coastal Commission Staff explained that the purpose of Policy 4.4.3 was to impose an overall "predominant line of development" along blocks of homes. After discussing application of the new predominant line of development standard to coastal bluffs in suggested modifications to the 2005 CLUP Update, the Staff Report stated:

Coastal canyon development will be regulated in much the same way. Where there was previously no setback for development on canyon lots, there is now a requirement to comply with the "predominant line of development." Suggested

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Modification 134 provides this new standard for development along Buck Gully and Morning Canyon. The addition of a canyon setback regulation in these areas will prevent significant landform alternation and limit encroachment into natural habitats." Suggested Modifications, p. 80, NPB-MAJ-1-04, October 13, 2005 (Item Th 8d). An excerpt of the Coastal Commission Staff Report is attached as Knight0044.

The City accepted the Commission modifications, including Policy 4.4.3-18, in December 2005. In conversations with City Staff in 2007, they advised the intent of Policy was to allow flexibility in establishing setbacks in built-up areas like Hazel Drive on lower Buck Gully.

The Approved Building Plans Are Consistent With Any Predominant Line of Development

This 2013 Appeal can be resolved by establishing an individual predominant line of development for the Knight Lot without affecting the entire block of homes. Staff concurs that this approach is allowed under the CLUP and consistent with City procedures. Ms. Knight proposes a predominant line that meets the following tests: it grants similar development rights to similar properties; it applies a standard that avoids creating non-conformities on existing lots to the extent possible; and it does not interfere with adoption of a predominant line for the entire block of homes in the future. The building plans previously approved by the Planning Director meet all of these tests.

The purpose of a predominant line of development is to control encroachment into natural areas, while respecting the rights of adjacent owners to use their property on an equitable basis. In this case, two aerial photographs are worth several thousand words. Two photographs of lower Hazel Drive, dated 3/5/2013, are attached as Knight0045-46; 0062. As clearly shown, "development" extends almost to the bottom of Buck Gully on a number of lots. The Knight Lot is tucked behind a much larger structure, blocking any views to the south. All but 4 lots extend farther into the Gully than the Knight Lot.

The General Plan/LCP Implementation Committee considered a 100' setback from the front property line as the predominant line of development, including both primary and accessory development in the same zone. Knight0042-43. This predominant line did not make any of the existing structures non-conforming, and would comfortably allow construction of the Knight Project, which extends 54'11" from the property line for the primary structure and less than 30' for decking and other accessory structures. As approved, the plans are consistent with the 100' setback line considered by the Committee.

In the 2007 Appeal, the City also considered information about existing setbacks submitted by the Knight family. All of the existing structures, both primary and accessory, were measured from their front property lines, and the size of lots analyzed. As shown on Knight0023-30 (Exhibits 4, 5, 6 and 7 to the 2007 Appeal), simple setback

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averaging made a high percentage of lots non-conforming. Even dropping out the lots constrained by topography made seven of the lots non-conforming. Factoring in the size of lots, together with topography, met the above standards, and minimized non-conformity. See Knight0031-32 (Exhibit 8 to the 2007 Appeal). The preferred predominant line incorporated accessory structures within the setback lines in accordance with the City's definition of "development" and the general approach of the Committee. See Knight0033-34 (Exhibit 9 to the 2007 Appeal). The Knight Project is consistent with either of these predominant lines.

The "line of development" determined by the Planning Director on the 2007 Appeal was even more restrictive than the above lines, thus ensuring consistency with any future adoption. The primary line was set at 54'11" or at the same setback as the neighboring house to the south. The accessory line was set at the limit of the first terraced area on the property to the south, which is at the 54-foot contour line. This Determination allowed the residence to extend into Buck Gully by the same distance as the residence at 308 Hazel Drive, but required accessory structures to pull back to the north. It also reflected the larger size of the Lot, which has more developable area than most other Hazel Drive lots.

The Previously Approved Line Of Development for the Knight Lot Is Consistent With Precedent

In the absence of adopted predominant lines of development for Buck Gully and Morning Canyon, the City has used a modified stringline approach to ensure consistency with potential future predominant lines of development. For instance, of 16 stringline projects made available for review, four were approved before Policy 4.3.3-18 was adopted and another three were submitted at the same time as the Knight Project. Of the total 16 projects, stringlines were exceeded or modified for site-specific reasons in at least 12 cases. On some lots, both the primary and accessory structures appear to exceed the designated stringline. In other cases, the nearest structural corner is not used or the connection is unclear. City Staff has also worked with the Evening Canyon homeowners association, which applies its own slightly different stringlines to homes on the east side of Buck Gully. Aerial photographs of the 16 lots are available upon request.

Even in situations where a predominant line of development is not adopted, the Coastal Commission has applied stringlines flexibly to reflect existing development patterns, site characteristics and equity. At 3 Canal Circle in Newport Beach, for instance, the Coastal Commission explained that "each development is reviewed on a case-by-case basis and while in this area stringline is typically used to prohibit encroachment toward the [Semeniuk] slough, in this instance the siting of the existing development already established the development pattern and the proposed project would not exacerbate an existing non-conformity. Thus, the development as proposed is consistent with the character of the surrounding area." Staff Report, p. 1, #5-10-254, October 28, 2010 (Item W4a), attached as Knight0041. At 168 West Avenida San Antonio in San Clemente, the Commission rejected a stringline that "would further restrict the size of the development footprint compared with adjacent pattern of development

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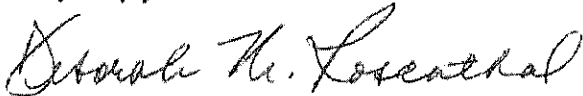
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with no significant benefit of increased protection of coastal resources." Staff Report, pp. 10-11, #5-12-314, December 19, 2012 (Item W19g), attached as Knight0038-40.

Conclusion

For all of the above reasons, Ms. Knight requests reinstatement of the development line for 312 Hazel Drive previously determined by the Planning Director in 2008, or adoption of the predominant line of development shown at Knight0033-34 (Exhibit 9 of the 2007 Appeal).

Very truly yours,



Deborah M. Rosenthal, AICP
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:408169837.2
Attachments

cc: Ms. Diane Knight
Ms. Kimberly Brandt, AICP
Mr. James Campbell
Ms. Makana Nova